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In this chapter . . .

This chapter begins with a discussion of the temporary placement of a child for adoption. Temporary placements may be made by the parent, guardian, child placing agency, or court that has legal and physical custody of a child. The procedural and investigative requirements both prior to and after a temporary placement are covered in this chapter.

Section 5.3 discusses state and federal law that prohibits the consideration of certain factors in the placement of a child for adoption. This section contains a list of offenses which, upon conviction, prevent a person from being eligible to have a child temporarily placed in his or her care.

Section 5.4 discusses how to resolve custody disputes that arise out of a temporary placement. This section details the procedures for revocation of a temporary placement and hearings to determine custody.

Section 5.6 discusses the Safe Delivery of Newborns Law, which allows a parent to surrender a newborn to an emergency service provider. The emergency service provider takes temporary protective custody and makes a temporary placement.

5.1 Temporary Placements

*See Section 6.1 for information on formal placements.

Prior to an adoption, an adoptee may be temporarily placed with the prospective adoptive parent. Temporary placements do not become formal placements until the parents consent or release parental rights or the court orders the termination of parental rights and approves the placement.*

MCL 710.22(r) provides:

“‘Placement’ or ‘to place’ means selection of an adoptive parent for a child and transfer of physical custody of the child to a prospective adoptive parent pursuant to this chapter.”

MCL 710.22(v) provides:

“‘Temporary placement’ means a placement that occurs before court approval under [MCL 710.51*] and that meets the requirements of [MCL 710.23d].”

*MCL 710.51 provides for court approval of formal placements. See Section 6.1 for information on formal placements.

A. Who May Make a Temporary Placement

The following persons and agencies are authorized to make temporary placements:

*See Section 8.2 for information regarding “adoption attorneys.”

- ♦ A parent having legal and physical custody of the child. MCL 710.23a(1). In a direct placement, the parent must be assisted by an adoption attorney* or a child placing agency. MCL 710.23d(1)(b).
- ♦ A guardian having legal and physical custody of the child. MCL 710.23a(1). In a direct placement, the guardian must be assisted by an adoption attorney or a child placing agency. MCL 710.23d(1)(b).
- ♦ A child placing agency that acquires written authorization* pursuant to MCL 710.23b(3) from the parent or guardian having legal custody of the child. MCL 710.23b(1).

*See Section 5.1(B)(4) for information on the written authorization to place a child.

A “child placing agency” is defined as “a private organization licensed under Act No. 116 of the Public Acts of 1973, being sections 722.111 to 722.128 of the Michigan Compiled Laws, to place children for adoption.” MCL 710.22(j). MCL 722.111(c) provides:

“‘Child placing agency’ means a governmental organization or an agency organized pursuant to the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192, for the purpose of receiving

children for placement in private family homes for foster care or for adoption. The function of a child placing agency may include investigating applicants for adoption and investigating and certifying foster family homes and foster family group homes as provided in [the Licensing of Child Care Organizations Act, MCL 722.111 et. seq.]. The function of a child placing agency may also include supervising children who are 16 or 17 years of age and who are living in unlicensed residences as provided in section 5(4).”

MCL 710.55(1) provides that only a person specified in MCL 710.23a(1), MCL 710.23b(1), and MCL 710.23c* may place a child for adoption. A person who places a child for adoption in violation of MCL 710.55(1) is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$100.00 or both, for the first violation. A person who is guilty of a second or subsequent violation is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$2,000.00 or both. MCL 710.55(1). The court may enjoin any person who violates MCL 710.55 from further violations. MCL 710.55(1).

*MCL 710.23c governs formal placements. For more information on formal placements see Section 6.1.

B. Identifying and Nonidentifying Information

1. Nonidentifying Information Provided to the Prospective Adoptive Parent

Except in the case of a step-parent or relative adoption,* prior to placing a child for adoption, the prospective parent must be provided with nonidentifying information.

MCL 710.27(1) provides:

“Before placement of a child for adoption, a parent or guardian, a child placing agency, the [FIA], or the court that places the child shall compile and provide to the prospective adoptive parent a written document containing all of the following nonidentifying information that is not made confidential by state or federal law and that is reasonably obtainable from the parents, relatives, or guardian of the child; from any person who has had physical custody of the child for 30 days or more; or from any person who has provided health, psychological, educational, or other services to the child:

“(a) Date, time, and place of birth of the child including the hospital, city, county, and state.

“(b) An account of the health and genetic history of the child, including an account of the child’s prenatal care; medical condition at birth; any drug or medication taken by the child’s mother during pregnancy; any subsequent

*MCL 710.27 does not apply to step-parent or relative adoptions. See Section 8.3 regarding step-parent adoption and Section 8.4 regarding relative adoption.

medical, psychological, psychiatric, or dental examination and diagnosis; any psychological evaluation done when the child was under the jurisdiction of the court; any neglect or physical, sexual, or emotional abuse suffered by the child; and a record of any immunizations and health care the child received while in foster or other care.

“(c) An account of the health and genetic history of the child’s biological parents and other members of the child’s family, including any known hereditary condition or disease; the health of each parent at the child’s birth; a summary of the findings of any medical, psychological, or psychiatric evaluation of each parent at the time of placement; and, if a parent is deceased, the cause of and the age at death.

“(d) A description of the child and the child’s family of origin, including all of the following:

- (i) Given first name of the child at birth.
- (ii) The age and sex of siblings of the child.
- (iii) The child’s enrollment and performance in school, results of educational testing, and any special educational needs.
- (iv) The child’s racial, ethnic, and religious background, and a general description of the child’s parents, including the age of the child’s parents at the time of termination of parental rights, and the length of time the parents had been married at the time of placement.
- (v) An account of the child’s past and existing relationship with any relative, foster parent, or other individual or facility with whom the child has lived or visited on a regular basis. The account shall not include names and addresses of individuals.
- (vi) The levels of educational, occupational, professional, athletic, or artistic achievement of the child’s family.
- (vii) Hobbies, special interests, and school activities of the child’s family.
- (viii) The circumstances of any judicial order terminating the parental rights of a parent for

abuse, neglect, abandonment, or other mistreatment of the child.

(ix) Length of time between the termination of parental rights and adoptive placement and whether the termination was voluntary or court-ordered.

(x) Any information necessary to determine the child's eligibility for state or federal benefits, including financial, medical, or other assistance."

The foregoing information must also be supplemented by other nonidentifying background information that a parent, guardian, child placing agency, the FIA, or court considers appropriate. MCL 710.27(2).

2. Compilation of Identifying Information

Identifying information must also be compiled by the parent, the guardian, the child placing agency or the court that places a child for adoption.* However, this information is *not* provided to the prospective adoptive parent.

MCL 710.27(3) provides:

"A parent or guardian, the [FIA], a child placing agency, or a court that places an adoptee under this chapter shall compile all of the following identifying information if reasonably obtainable:

"(a) Name of the child before placement in adoption.

"(b) Name of each biological parent at the time of termination of parental rights.

"(c) The most recent name and address of each biological parent.

"(d) Names of the biological siblings at the time of termination."

Note: A parent or guardian and prospective adoptive parent are not prohibited from exchanging identifying information or meeting if a direct placement adoption is made pursuant to MCL 710.23a or a temporary placement is made pursuant to MCL 710.23b. MCL 710.27(7). See Section 8.1 for information on direct placement adoptions.

*Except in cases of step-parent or relative adoption. MCL 710.27(6). See Section 8.3 regarding step-parent adoption and Section 8.4 regarding relative adoption.

Identifying and Nonidentifying Information. Both the nonidentifying and identifying information required in the foregoing paragraphs must be maintained by the child placing agency, the FIA, or the court that places the child. MCL 710.27(4). An employee or agent of a child placing agency, the

FIA, or the court who intentionally destroys this information is guilty of a misdemeanor. MCL 710.27(4). Identifying and nonidentifying information is maintained in the central adoption registry. See Section 9.4 for information on the central adoption registry.

C. Procedural and Documentary Requirements

A prospective adoptive parent with whom a child is temporarily placed must be a Michigan resident. MCL 710.23d(1)(a).

1. Statement of Transfer by Parent, Guardian, or Representative of Child Placing Agency

A statement evidencing the transfer of physical custody of the child must be completed, signed, and filed with the court. The statement must be signed by the parent, guardian, or representative of the child placing agency in the presence of a witness, who must also sign the document. If the parent making the temporary placement is an unemancipated minor, the statement is not valid unless it is also signed in the presence of the witness by the minor's parent or guardian. MCL 710.23d(1)(c). Pursuant to MCL 710.23d(1)(c)(i)–(v), the statement must contain all of the following:

“(i) The date of the transfer of physical custody.

“(ii) Language providing that the transfer is for the purpose of adoption by the prospective adoptive parent who is a Michigan resident.

“(iii) Language indicating that unless the parent or guardian and the prospective adoptive parent agree otherwise, the prospective adoptive parent has the authority to consent to all medical, surgical, psychological, educational, and related services for the child and language indicating that the parent or guardian otherwise retains full parental rights to the child being temporarily placed and that the temporary placement may be revoked by the filing of a petition under subsection (5).*

“(iv) Language providing that the person making the transfer has read a preplacement assessment* of the prospective adoptive parent completed or updated within 1 year before the date of the transfer with a finding that the prospective adoptive parent is suitable to be a parent of an adoptee. If a child placing agency makes the transfer of physical custody, the statement shall include a verification that the child placing agency has given the parent or guardian who authorized the temporary placement an opportunity to review the preplacement assessment.

*See Section 5.4 for information on revocation of a temporary placement.

*See Section 5.2 for information on preplacement assessments.

“(v) Even if only 1 parent is making the temporary placement, the name and address of both parents of the child, including in the case of a child born out of wedlock,* the name and the address of each putative father of the child, if known.”

*See Section 3.3 for information on children born “out of wedlock.”

See Appendix B for the SCAO form “Statement of Parent/Guardian Authorizing Temporary Placement of Child for Adoption.”

Except when the parties otherwise agree, when a child is temporarily placed with the prospective adoptive parent, the prospective adoptive parent may consent to all medical, surgical, psychological, educational, and related services for the child. MCL 710.23d(8).

2. Statement of Transfer by the Prospective Adoptive Parent

The prospective adoptive parent must sign a statement of transfer of physical custody in the presence of a witness, who also signs the document. The statement must provide the date of transfer of physical custody and the name and address of the prospective adoptive parent. MCL 710.23d(1)(d). Pursuant to MCL 710.23d(1)(d)(i)–(ii), the statement must also contain an attestation by the adoptive parent of the following:

“(i) That the prospective adoptive parent understands that the temporary placement will not become a formal placement until the parents consent or release their parental rights and the court orders the termination of parental rights and approves the placement and that the prospective adoptive parent must relinquish custody of the child within 24 hours after being served with an order pursuant to [MCL 710.23e(2)].* ”

*See Section 6.1 for information on formal placements. See Section 5.4(B) for information on MCL 710.23e(2).

“(ii) That the prospective adoptive parent agrees to reside with the child in Michigan until a change of residence is approved by the court after formal placement occurs.”

See Appendix B for the SCAO form “Statement of Prospective Adoptive Parent Transferring Physical Custody of Child for Adoption.”

3. Transfer Report

After a child is placed in a temporary placement, a report must be submitted to the court in the county where the prospective adoptive parent resides. MCL 710.23d(2) provides:

“Not later than 2 days, excluding weekends and holidays, after a transfer of physical custody of a child pursuant to subsection (1), the adoption attorney* or child placing agency who assists with the temporary placement or the child placing agency that makes the temporary placement shall submit to the court in the county in which the prospective adoptive parent resides a report that contains all of the following:

*See Section 8.1(B) for information on “adoption attorneys.”

*See Section 3.1(C) regarding putative fathers.

*The documents required under MCL 710.23d(1)(c) and (d) are the statement of transfer and transfer report. See Sections 5.1(C)(1)–(2).

- (a) The date of the transfer of physical custody.
- (b) The name and address of the parent or guardian or the child placing agency who made the temporary placement.
- (c) The name and address of the prospective adoptive parent with whom the temporary placement was made.
- (d) Even if only 1 parent is making the temporary placement, the name and address of both parents of the child, including, in the case of a child born out of wedlock, the name of each putative father,* if known.
- (e) The documents required under subsection (1)(c) and (d) and, if applicable, the authorization required under [MCL 710.23b].”*

See Appendix B for the SCAO forms “Statement of Parent/Guardian Transferring Physical Custody of Child for Adoption” and “Statement of Child Placing Agency Transferring Physical Custody of Child for Adoption.”

4. Written Authorization in Agency Placement

In order to temporarily place a child for adoption, a child placing agency must obtain written authorization from the parent or guardian having legal and physical custody of a child. MCL 710.23b(1).

The written authorization must comply with MCL 710.23b(3), which provides:

“In a written document signed by a witness and by the parent or guardian in the presence of the witness, a parent or guardian having legal and physical custody of a child may authorize a child placing agency to make a temporary placement of the child under [MCL 710.23d]. If the parent of the child being temporarily placed is an unemancipated minor, the authorization is not valid unless it is also signed in the presence of the witness by a parent or guardian of that minor parent.”

5. Disposition Report

Not later than 30 days after the physical transfer of a child in a temporary placement, a disposition report must be filed with the court. MCL 710.23d(3) provides:

“Not later than 30 days after the transfer of physical custody of a child under this section, the adoption attorney or child placing agency who assists with the temporary placement or the child placing agency that makes the temporary placement shall submit to the court that received the report described in subsection (2)* a report indicating whether or not 1 of the following dispositions has occurred:

“(a) A petition for adoption* of the child has been filed.

“(b) The child has been returned to the agency or to a parent or other person having legal custody.”

See Appendix B for the SCAO form “Followup Report After Temporary Placement of Child for Adoption.”

See Appendix A for the temporary placement checklists used by the Oakland and Kalamazoo County circuit courts.

D. Responsibilities of the Court and the Prosecutor

1. Court’s Responsibility

If the court does not receive the disposition report as required by MCL 710.23d(3) within 45 days after the transfer of physical custody of the child, the court must immediately investigate and determine whether an adoption petition has been filed or the child has been returned to a parent or other person having legal custody. MCL 710.23d(4). If the disposition report or the court’s investigation reveals that an adoption petition has not been filed or the child has not been returned to the person having legal custody, then the court must immediately report it to the prosecutor. MCL 710.23d(4).

See Appendix B for the SCAO form “Clerk’s Report to Prosecuting Attorney.”

2. Prosecutor’s Responsibility

When the prosecutor receives a report from the court indicating that a child was temporarily placed for adoption and 45 days have elapsed without a petition for adoption being filed or the child being returned to the parent or other person having legal custody, the prosecutor must immediately file a petition for disposition. MCL 710.23d(4). The petition must be filed in the court that received the report of transfer of physical custody required by MCL 710.23d(2). MCL 710.23d(4). The court that receives the report of transfer is the court in the county where the prospective adoptive parent resides. MCL 710.23d(2). The prosecutor is not required to file a petition for disposition if one of the following has been filed:

*The court that received the report in subsection (2) is the court located in the county where the prospective adoptive parent resides. MCL 710.23d(2).

*See Section 4.6 for information on adoption petitions.

*See Section 5.4.

*See Section 5.4.

*See Section 5.4.

- A petition to revoke a temporary placement filed by a parent or guardian pursuant to MCL 710.23d(5).*
- A petition for disposition of the child filed by the prospective adoptive parent indicating that he or she is either unwilling or unable to proceed with the adoption pursuant to MCL 710.23d(6).*
- A petition for disposition of the child filed by the child placing agency that temporarily placed the child pursuant to MCL 710.23d(7). MCL 710.23d(4).*

Upon the receipt of a petition from the prosecutor, the court must hold a hearing within 14 days to determine custody of the child. MCL 710.23(e)(1). See Section 5.4(B) for information on the hearing to determine custody.

E. Parental Involvement in Temporary Placement Made by Child Placing Agency or FIA

If the temporary placement is being made by a child placing agency or the FIA, the agency or the FIA may involve the parent or legal guardian in the process of selecting a prospective adoptive parent. MCL 710.23b(2).

In an adoption where the parent or guardian participates in the selection of the adoptive parent, an adoption facilitator must allow the parent or guardian the option of selecting from the adoption facilitator's entire pool of potential adoptive parents. MCL 722.957(3).

The term "adoption facilitator" is not defined in the Adoption Code. However, the Foster Care and Adoption Services Act, MCL 722.951 et seq., defines an "adoption facilitator" as "a child placing agency or an adoption attorney." MCL 722.952(d).

5.2 Preplacement Assessments

MCL 710.23d(1)(c)(iv) requires that the person who is temporarily placing a child for adoption must read a preplacement assessment of the prospective adoptive parent prior to placing the child. The preplacement assessment must have been completed or updated within one year of the date of the physical transfer of the child with a finding that the prospective adoptive parent is a suitable parent. MCL 710.23d(1)(c)(iv).

In cases of direct placement, an individual seeking to adopt may request at any time that a preplacement assessment be prepared by a child placing agency. MCL 710.23f(1). The individual requesting the assessment does not need to identify a prospective adoptee when the request is made or when the request is completed. MCL 710.23f(2).

An adoption facilitator may not refuse to provide services to a potential adoptive parent based solely on age, race, religious affiliation, disability, or income level, with one exception. A private child placing agency that is operated, supervised, or controlled by a religious institution or organization may limit its services or give preference to an applicant of the same religion. MCL 722.957(1)–(2).

An individual may have more than one preplacement assessment or may request that, once initiated, an assessment not be completed. MCL 710.23f(3).

MCL 710.23f(4) provides:

“If an individual is seeking to adopt a child from a particular child placing agency, the agency may require the individual to be assessed by its own employee, even if the individual has already had a favorable preplacement assessment completed by another child placing agency.”

A child placing agency must request that an individual seeking a preplacement assessment provide a document from the Michigan State Police and the Federal Bureau of Investigation describing all of the individual’s criminal convictions as shown by that agency’s records, or stating that the agency’s records indicate that the individual has not been convicted of a crime. If the individual requests that the child placing agency obtain the criminal record from law enforcement and the individual signs an authorization, the child placing agency must obtain the records on behalf of the individual. MCL 710.23f(6).

A. Basis for Preplacement Assessment

Preplacement assessments must be based upon the following:

- personal interviews and visits to the residence of the individual being assessed,
- interviews of others who know the individual, and
- reports received pursuant to MCL 710.23f(5)(a)–(k).^{*} MCL 710.23f(5).

The preplacement assessment must contain a list of the sources of information on which it is based. MCL 710.23f(7).

B. Contents of Preplacement Assessment

MCL 710.23f(5)(a)–(k) require the preplacement assessment to contain all of the following information about the individual being assessed:

^{*}See Section 5.2(B) for a description of the reports referred to in MCL 710.23f(5).

*See Section 5.3 for information regarding the consideration of these factors.

“(a) Age, nationality, race or ethnicity, and any religious preference.*

“(b) Marital and family status and history, including the presence of other children or adults in the household and the relationship of those individuals to the adoptive parent.

“(c) Physical and mental health, including any history of substance abuse.

“(d) Educational and employment history and any special skills and interests.

“(e) Property and income, including outstanding financial obligations as indicated in a current financial report provided by the individual.

“(f) Reason for wanting to adopt.

“(g) Any previous request for an assessment or involvement in an adoptive placement and the outcome of the assessment or placement.

“(h) Whether the individual has ever been the respondent in a domestic violence proceeding or a proceeding concerning a child who was allegedly abused, dependent, deprived, neglected, abandoned, or delinquent, and the outcome of the proceeding.

“(i) Whether the individual has ever been convicted of a crime.*

“(j) Whether the individual has located a parent interested in placing a child with the individual for adoption and a brief description of the parent and the child.

“(k) Any fact or circumstance that raises a specific concern about the suitability of the individual as an adoptive parent, including the quality of the environment in the home, the functioning of other children in the household, and any aspect of the individual’s familial, social, psychological, or financial circumstances that may be relevant to a determination that the individual is not suitable. A specific concern is one that suggests that placement of any child, or a particular child, in the home of the individual would pose a risk of harm to the physical or psychological well-being of the child.”

Based upon the investigation and information obtained for the preplacement assessment, the child placing agency must determine whether a parent is a suitable adoptive parent.

*Criminal convictions can make a prospective adoptive parent ineligible to have a child placed in his or her care. See Section 5.3(A).

C. Determination of Suitability

Once the child placing agency has completed the necessary investigation and reviewed the prospective adoptive parent's criminal history,* the child placing agency must make a determination for the preplacement assessment report on the suitability of the prospective adoptive parent.

MCL 710.23f(7) provides, in relevant part:

“ . . . If the child placing agency determines that the information assessed does not raise a specific concern, the child placing agency shall find that the individual is suited to be an adoptive parent. If the child placing agency determines that the information assessed does raise a specific concern, the child placing agency shall find that the individual is not suitable to be an adoptive parent. The conclusion shall be supported by a written account of how 1 or more specific concerns pose a risk to the physical or psychological well-being of any child or a particular child. If the conclusion of a preplacement assessment regarding the suitability of the individual differs from the conclusion in a prior assessment, the child placing agency shall explain and justify the difference.”

A “specific concern” is defined in MCL 710.23f(5)(k) as a concern “that suggests that placement of any child, or a particular child, in the home of the individual would pose a risk of harm to the physical or psychological well-being of the child.”

D. Review of Finding of Unsuitability

After assessing the information, if the child placing agency determines that a prospective adoptive parent is unsuitable, that prospective adoptive parent may seek a review of that determination after he or she files a petition for adoption.* MCL 710.23f(8).

Investigation. Prior to a hearing to review the determination of suitability, the court may order an agent or employee of the court to make an investigation and report the findings to the court. MCL 710.23f(8).

Court Determination. If the court finds by clear and convincing evidence that the conclusion of unsuitability is not justified, the person with legal custody of the child may place the child with that individual. If the court determines that the conclusion of unsuitability is justified, the court must order that the child not be placed with that individual. MCL 710.23f(8).

*Criminal convictions can make a prospective adoptive parent ineligible to have a child placed in his or her care. See Section 5.3(A).

*See Section 4.6 for information on adoption petitions.

5.3 Prohibited Placements

Both state and federal laws prohibit certain placements and the consideration of certain factors in the placement of a child for adoption.

A. Conviction of Child Abuse or Criminal Sexual Conduct

A child may not be placed* with a prospective adoptive parent if the person or court who is authorized to place the child has reliable information that the prospective adoptive parent has been convicted of any of the following:

- MCL 750.145a — Accosting, enticing or soliciting a child for immoral purposes. MCL 710.22a(a).
- MCL 750.145c(2) — Creating child sexually abusive material through knowingly persuading, inducing, enticing, coercing, causing, or allowing a child to engage in child sexually abusive activity, or the producing, making or financing of any child sexually abusive activity or material. MCL 710.22a(a).
- MCL 750.145c(3) — Distributing, promoting, or financing the distribution or promotion of any child sexually abusive material. MCL 710.22a(a).
- MCL 750.145c(4) — Possession of child sexually abusive material. MCL 710.22a(a).
- MCL 750.520b — First-degree criminal sexual conduct, if the victim was under the age of 18 at the time the crime was committed. MCL 710.22a(b).
- MCL 750.520c — Second-degree criminal sexual conduct, if the victim was under the age of 18 at the time the crime was committed. MCL 710.22a(b).
- MCL 750.520d — Third-degree criminal sexual conduct, if the victim was under the age of 18 at the time the crime was committed. MCL 710.22a(b).
- MCL 750.520e — Fourth-degree criminal sexual conduct, if the victim was under the age of 18 at the time the crime was committed. MCL 710.22a(b).
- MCL 750.520f — A second or subsequent criminal sexual conduct offense or any similar statute of the United States or other states including rape, carnal knowledge, indecent liberties, gross indecency, or an attempt to commit such an offense, if the victim was under the age of 18 at the time the crime was committed. MCL 710.22a(b).

*Adoption is also prohibited if the prospective adoptive parent has been convicted of any of the enumerated crimes. See Section 4.6(B).

- MCL 750.520g — Assault with intent to commit conduct involving penetration, if the victim was under the age of 18 at the time the crime was committed. MCL 710.22a(b).
- The law of another state substantially similar to one of the above enumerated crimes. MCL 710.22a(c).

42 USC 671(a)(20)(A) requires a state to provide procedures for criminal record checks for any prospective adoptive parent before the adoptive parent may be approved for placement of a child. In addition, the Social Security Act, as amended by the Adoption and Safe Families Act (ASFA) provides:

“(i) in any case in which a record check reveals a felony conviction for child abuse or neglect, for spousal abuse, for a crime against children (including child pornography), or for a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery, if a State finds that a court of competent jurisdiction has determined that the felony was committed at any time, such final approval shall not be granted; and

“(ii) in any case in which a record check reveals a felony conviction for physical assault, battery, or a drug-related offense, if a State finds that a court of competent jurisdiction has determined that the felony was committed within the past 5 years, such final approval shall not be granted. . . .” 42 USC 671(a)(20)(A)(i)–(ii).

Michigan must comply with the above provisions, as well as other provisions of ASFA, in order to be eligible to receive federal adoption assistance funding. 42 USC 671(a). ASFA provides a provision to opt out of the above requirements, 42 USC 671(a)(20)(B). However, Michigan has not opted out.

Currently, Michigan law does not comply with all of the provisions of 42 USC 671. Michigan law does not prohibit adoption when an adoptive parent has a conviction for physical assault, battery, or a drug-related offense within the past five years, or when a parent is convicted of spousal abuse, child abuse or neglect, or for “a crime involving violence including . . . homicide.” Michigan law prohibits placements or adoption when the prospective adoptive parent is convicted of any of the above enumerated crimes, when the victim of the crime was under the age of eighteen. However, 42 USC 671, requires that the adoptive parent not be convicted of a “crime involving violence, including rape[and] sexual assault.” No limitation on the age of the victim of the criminal sexual conduct is provided in the federal law.

Currently Senate Bill 516 (2003), which has been passed by the Michigan Senate, seeks to change the Michigan law to prohibit placement or adoption by a prospective adoptive parent who has been convicted of one of the above enumerated criminal sexual conduct crimes, regardless of the age of the victim.

B. Considerations of Age, Race, National Origin, Religious Affiliation, Disability, or Income

MCL 722.957(1) provides in part:

“ . . . A child placing agency shall not make placement decisions based solely on age, race, religious affiliation, disability, or income level.”

Private child placing agencies may consider religious affiliation in certain situations. MCL 722.957(2) provides:

“Subsection (1), as related to religious affiliation, does not apply to a private child placing agency operated, supervised, or controlled by a religious institution or organization that limits services or gives preference to an applicant of the same religion.”

Federal Adoption Rights

42 USC 1996b(1) prohibits a person or government that is involved in adoption placements from doing any of the following:

“(A) deny to any individual the opportunity to become an adoptive or a foster parent, on the basis of the race, color, or national origin of the individual, or of the child, involved; or

“(B) delay or deny the placement of a child for adoption or into foster care, on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved.”

*See 42 USC 2000d et. seq.

Noncompliance with 42 USC 1996b(1) is a violation of title VI of the Civil Rights Act of 1964.* 42 USC 1996b(2).

*See Chapter 11 for information on the Indian Child Welfare Act.

42 USC 1996b does not affect the application of the Indian Child Welfare Act of 1978.* Please note that the designation of a child as an “Indian child” under the Indian Child Welfare Act is *not* a racial classification; it is a political designation.

42 USC 671(a)(18) provides that states are not eligible for adoption assistance payments pursuant to 42 USC 670 if they have not developed a state plan, which is approved by the Secretary, which provides the following:

“ . . . neither the State nor any other entity in the State that receives funds from the Federal Government and is involved in adoption or foster care placements may--

“(A) deny to any person the opportunity to become an adoptive or a foster parent on the basis of the race, color, or national origin of the person, or of the child involved; or

“(B) delay or deny the placement of a child for adoption or into foster care, on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved[.]”

5.4 Resolving Custody Disputes After a Temporary Placement

The Adoption Code, MCL 710.21 et seq., provides the exclusive remedy for all custody disputes arising out of a temporary adoptive placement. MCL 710.23e(7).

After a temporary placement occurs, one of the parties may decide not to proceed with the adoption. In order to change the temporary placement, the party that does not wish to proceed with the placement or the adoption must file a petition in the court where the report following the transfer of physical custody pursuant to MCL 710.23d(2) was filed.*

A. Petition for Disposition or Revocation of a Temporary Placement

1. Parent or Guardian

A parent or guardian who has temporarily placed a child for adoption may file a petition to revoke the temporary placement. MCL 710.23d(5) provides:

“A parent or guardian who wishes to regain custody of a child who has been placed temporarily shall file a petition in the court that received the report described in subsection (2)* requesting that the temporary placement be revoked and that the child be returned to the parent or guardian. Upon request of the parent or guardian, the adoption attorney or child placing agency who assisted in making the temporary placement shall assist the parent or guardian in filing the petition to revoke the temporary placement. If the temporary placement was made by a child placing agency pursuant to [MCL 710.23b(3)], the child placing agency shall file the petition on behalf of a parent or guardian who wishes to regain custody of the child.”

See Appendix B for the SCAO form “Petition to Determine Custody of Child Temporarily Placed for Adoption.”

2. Prospective Adoptive Parent

A prospective adoptive parent may file a petition for disposition. If the prospective adoptive parent changes his or her mind and

*The report of transfer of physical custody is filed in the county where the prospective adoptive parent resides. See Section 5.1(C) for more information on the report required by MCL 710.23d(2).

*The report described in MCL 710.23d(2) is the transfer report. It is filed in the county where the prospective adoptive parents reside. See Section 5.1(C)(3).

*The court that received the report described in MCL 710.23d(2) is the court where the prospective adoptive parents reside. See Section 5.1(C)(3).

decides not to proceed with the adoption or is unable to proceed with the adoption after a temporary placement, then he or she must file a petition for disposition of the child. MCL 710.23d(6) provides:

“If a prospective adoptive parent with whom a child has been temporarily placed is either unwilling or unable to proceed with the adoption, the prospective adoptive parent may file a petition in the court that received the report described in subsection (2)* for disposition of the child pursuant to [MCL 710.23e].”

See Appendix B for the SCAO form “Petition to Determine Custody of Child Temporarily Placed for Adoption.”

3. Child Placing Agency

A child placing agency may become unable to proceed with an adoption or may decide not to proceed with an adoption after the temporary placement of the child. MCL 710.23d(7) provides:

*The court that received the report described in MCL 710.23d(2) is the court where the prospective adoptive parents reside. See Section 5.1(C)(3).

“If a child placing agency that temporarily placed a child is unable to proceed with an adoption because of the unavailability of a parent or guardian to execute a release, or if a child placing agency with legal custody of a child decides not to proceed with the adoption by a prospective adoptive parent with whom the child has been temporarily placed and the prospective adoptive parent refuses upon the agency’s request to return the child to the agency, the child placing agency shall file a petition in the court that received the report described in subsection (2)* for disposition of the child pursuant to [MCL 710.23e].”

See Appendix B for the SCAO form “Petition to Determine Custody of Child Temporarily Placed for Adoption.”

B. Hearing to Determine Custody

When a petition for disposition is filed, MCL 710.23e provides the procedures the court is to follow.

Parent or Guardian Files a Petition for Revocation of Temporary Placement. If a parent or guardian has filed a petition for revocation of a temporary placement, upon receiving the petition the court must immediately issue an ex parte order directing the prospective adoptive parent to return the child to the parent or guardian with legal custody within 24 hours after receipt of the order, unless the court proceeds under MCL 710.23e(3). MCL 710.23e(2).

MCL 710.23e(3) provides:

“The court may appoint an attorney to represent the child or refer the matter to the [FIA]. The attorney or the [FIA] may file a petition on the child’s behalf requesting the court to take jurisdiction under [MCL 712A.2(b)].* If that petition has not been filed within 14 days after the court appoints an attorney or refers the matter to the [FIA] under this section, the court shall order the return of the child to the parent or guardian with legal custody. During the period before the petition for jurisdiction under [MCL 712A.2(b)] is filed and a preliminary hearing is held or the return of custody is ordered, the court shall remove the child from the home of the prospective adoptive parent and make a temporary disposition appropriate for the welfare of the child as authorized by [MCL 712A.18].”

*MCL
712A.2(b)
governs child
protective
proceedings.

Note: A detailed discussion of child protective proceedings is beyond the scope of this benchbook. See Miller, *Child Protective Proceedings Benchbook: A Guide to Abuse and Neglect Cases* (MJI, 1999).

Petitions to Determine Custody. If one of the following petitions is filed, the court must hold a hearing to determine the custody of the child within 14 days of the filing of the petition:

- Petition to determine custody filed by the prosecutor pursuant to MCL 710.23d(4).
- Petition for disposition of the child filed by the prospective adoptive parent pursuant to MCL 710.23d(6).
- Petition to determine custody filed by the child placing agency pursuant to MCL 710.23d(7).* MCL 710.23e(1).

*See Section
5.1 for
information on
MCL
710.23d(4). See
Section 5.4 for
information on
MCL
710.23d(6) and
(7).

MCL 710.24a(5) provides that the “interested parties” in a hearing related to temporary placement are the following:

“(a) The parent or guardian who made or authorized the temporary placement.

“(b) The parent or guardian of an unemancipated minor parent of the adoptee.

“(c) A child placing agency that was authorized under [MCL 710.23b] to make the temporary placement.*

“(d) If only 1 parent made or authorized the temporary placement, the other parent and each putative father of the adoptee.

“(e) The prospective adoptive parent with whom temporary placement was made.

See Section
5.1(C)(4) for
more
information on
MCL 710.23b.

*See Section 5.1(D)(2) for information on a prosecutor's petition filed pursuant to MCL 710.23d.

“(f) The prosecutor who filed a petition under [MCL 710.23d].*

“(g) The guardian ad litem, if a guardian ad litem has been appointed.”

The court may, in the interests of justice, require additional parties to be served. MCL 710.24a(6).

Personal Service. MCR 3.805(A) provides:

“Personal service of notice of hearing on a petition for disposition of a child pursuant to MCL 710.23e(1) must be served at least 3 days before the date set for hearing.”

Service by Mail. MCR 3.805(B) requires service by mail to be made at least seven days before the date set for the hearing to determine custody.

Service on Interested Party When Whereabouts is Unknown. MCR 3.805(C)–(D) provide:

“(C) Interested Party, Whereabouts Unknown. If the whereabouts of an interested party, other than the putative father who did not join in the temporary placement, is unknown, service on that interested party will be sufficient if personal service or service by mail is attempted at the last known address of the interested party.

“(D) Putative Father, Identity or Whereabouts Unknown. If the identity of the putative father is unknown or the whereabouts of a putative father who did not join in the temporary placement is unknown, he need not be served notice of the hearing.”

The court may appoint a guardian ad litem for the child or for a minor parent of the child. MCL 710.23e(6).

Dispositions. The court may order the return of a child to a child placing agency that has obtained legal custody. MCL 710.23e(5).

The court also has the option of appointing a guardian for the child. MCL 710.23e(4) provides:

“Subject to subsection (2), the court may appoint a guardian under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8102, in response to a petition filed by the prospective adoptive parent or another individual interested in the child’s welfare, and make a temporary disposition appropriate for the child’s welfare as authorized by section 18 of chapter XIIA until an order of guardianship is entered.”

See Appendix B for the SCAO form “Order to Determine Custody of Child Temporarily Placed for Adoption.”

5.5 Investigative Report

Once a child is placed temporarily, an adoption petition* must be filed within 30 days. MCL 710.23d(3). Upon the filing of the adoption petition, the court must direct a full investigation by an employee or agent of the court, a child placing agency, or the FIA. The court may use the preplacement assessment and may order an additional investigation. MCL 710.46(1).

MCL 710.46(1)(a)–(c) require the following to be considered in the investigation:

“(a) The best interests of the adoptee.

“(b) The adoptee’s family background, including names and identifying data regarding the parent or parents, if obtainable.

“(c) The reasons for the adoptee’s placement away from his or her parent or parents.”

The “best interests of the adoptee” are defined by MCL 710.22(f) as follows:

“‘Best interests of the adoptee’ or ‘best interests of the child’ means the sum total of the following factors to be considered, evaluated, and determined by the court to be applied to give the adoptee permanence at the earliest possible date:

(i) The love, affection, and other emotional ties existing between the adopting individual or individuals and the adoptee or, in the case of a hearing under section 39* of this chapter, the putative father and the adoptee.

(ii) The capacity and disposition of the adopting individual or individuals or, in the case of a hearing under section 39 of this chapter, the putative father to give the adoptee love, affection, and guidance, and to educate and create a milieu that fosters the religion, racial identity, and culture of the adoptee.

(iii) The capacity and disposition of the adopting individual or individuals or, in the case of a hearing under section 39 of this chapter, the putative father, to provide the adoptee with food, clothing, education, permanence, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.

(iv) The length of time the adoptee has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.

*See Section 4.6 for information on adoption petitions.

*MCL 710.39 governs hearings for termination of a putative father’s rights. See Section 2.12 for information on MCL 710.39.

*If the adoptee is over 14 years of age, the adoptee must consent to the adoption. MCL 710.43(2). See Section 2.6(A)(3).

(v) The permanence as a family unit of the proposed adoptive home, or, in the case of a hearing under section 39 of this chapter, the home of the putative father.

(vi) The moral fitness of the adopting individual or individuals or, in the case of a hearing under section 39 of this chapter, of the putative father.

(vii) The mental and physical health of the adopting individual or individuals or, in the case of a hearing under section 39 of this chapter, of the putative father, and of the adoptee.

(viii) The home, school, and community record of the adoptee.

(ix) The reasonable preference of the adoptee, if the adoptee is 14 years of age or less and if the court considers the adoptee to be of sufficient age to express a preference.*

(x) The ability and willingness of the adopting individual or individuals to adopt the adoptee's siblings.

(xi) Any other factor considered by the court to be relevant to a particular adoption proceeding, or to a putative father's request for child custody."

A written report of the investigation must be filed within three months after the court orders the investigation. MCL 710.46(2).

In some situations, a full investigation may be waived by the court. MCL 710.46(3) provides:

"If the adoptee has been placed for foster care with the petitioner for 12 months or longer and the foster family study was completed or updated not more than 12 months before the petition was filed, the court, upon motion by the petitioner, may waive the full investigation required by this section. The foster family study, with information added as necessary to update or supplement the original study, may be substituted for the written report required under subsection (2)."

Although MCL 710.46 requires the investigation report to be filed within three months of when it is ordered, there is no penalty or sanction provided for failing to meet the deadline. The Court of Appeals in *In re DaBaja*, 191 Mich App 281, 287 (1991), held that a procedural defect by itself is not sufficient cause to set aside the trial court's decision to terminate respondent's parental rights. In *DaBaja*, the father's parental rights were terminated pursuant to MCL 710.51. MCL 710.51 provides that "[n]ot later than 14 days after receipt

of the report of investigation . . . the judge shall examine the report and shall enter an order terminating the rights of the child's parent or parents. . . ." The trial court in *DaBaja* terminated the father's parental rights without receiving the investigation report. The Court of Appeals held that the lower court's failure to receive and review the investigation report prior to terminating the father's parental rights was a procedural defect and that by itself was insufficient cause to set aside the termination order. 191 Mich App at 287.

5.6 Safe Delivery of Newborns Law

A parent may surrender a newborn child to an emergency service provider. The Safe Delivery of Newborns Law, MCL 712.1 et seq., governs the procedures for surrendering a newborn.

MCL 712.1(2)(m) provides:

"'Surrender' means to leave a newborn with an emergency service provider without expressing an intent to return for the newborn."

MCL 712.1(2)(j) provides:

"'Newborn' means a child who a physician reasonably believes to be not more than 72 hours old."

A. Responsibilities of the Emergency Service Provider

MCL 712.1(2) defines "emergency service provider" as "a uniformed or otherwise identified employee or contractor of a fire department, hospital, or police station when such an individual is inside the premises and on duty." MCL 712.1(2)(e).

If a parent surrenders a child, who may be a newborn, to an emergency service provider, the emergency service provider must act under the assumption that the child is a newborn and immediately, without a court order, take temporary protective custody of the child. MCL 712.3(1). MCL 712.3(1)(a)–(d) provide that the emergency service provider shall do all of the following:

"(a) Take action necessary to protect the physical health and safety of the newborn.

"(b) Inform the parent that by surrendering the newborn, the parent is releasing the newborn to a child placing agency to be placed for adoption.

"(c) Inform the parent that the parent has 28 days to petition the court to regain custody of the newborn.

“(d) Provide the parent with written material approved by or produced by the family independence agency that includes, but is not limited to, the following statements:

(i) By surrendering the newborn, the parent is releasing the newborn to a child placing agency to be placed for adoption.

(ii) The parent has 28 days after surrendering the newborn to petition the court to regain custody of the newborn.

(iii) After the 28-day period to petition for custody elapses, there will be a hearing to terminate parental rights.*

(iv) There will be public notice of this hearing, and the notice will not contain the parent’s name.

(v) The parent will not receive personal notice of this hearing.

(vi) Information the parent provides to an emergency service provider will not be made public.

(vii) A parent can contact the safe delivery line established under [MCL 712.20*] for more information.”

See Appendix H for the factsheet “Surrendering Parent Rights” prepared by the FIA.

*After 28 days, if a petition for custody has not been filed, the FIA must file a petition to terminate parental rights. See Section 5.6(G) for more information.

*See Section 5.6(H) for information regarding the safe delivery line.

Note: Emergency service providers have additional requirements to meet when the child is surrendered pursuant to the Born Alive Infant Protection Act, MCL 333.1071 et seq. A discussion of the Born Alive Infant Protection Act is outside of the scope of this benchbook.

After the emergency service provider provides the parent with the aforementioned information, MCL 712.3(2)(a)–(g) require the emergency service provider to make a reasonable attempt to do all of the following:

“(a) Encourage the parent to provide any relevant family or medical information.

“(b) Provide the parent with the pamphlet produced under [MCL 712.20] and inform the parent that he or she can receive counseling or medical attention.

“(c) Inform the parent that information that he or she provides will not be made public.

“(d) Ask the parent to identify himself or herself.

“(e) Inform the parent that in order to place the newborn for adoption the state is required to make a reasonable attempt to identify the other parent, and then ask the parent to identify the other parent.

“(f) Inform the parent that the child placing agency that takes temporary protective custody of the newborn can provide confidential services to the parent.

“(g) Inform the parent that the parent may sign a release for the newborn which may be used at the parental rights termination hearing.”

See Appendix H for the FIA form “Confidential Voluntary Medical Background Form for a Surrendered Newborn” and general instructions for completing the form. This form may be completed by the emergency service provider.

See Appendix H for the FIA form “Voluntary Release for Adoption of a Surrendered Newborn by Parent.” This form may be completed and signed by a parent surrendering his or her newborn as indicated by MCL 712.3(2)(g).

B. Responsibilities of the Hospital

When an emergency service provider, other than a hospital, takes a newborn into temporary protective custody, they must transfer the newborn to a hospital. MCL 712.5(1).

A hospital that takes a newborn into temporary protective custody must have the newborn examined by a physician. If the physician who examines the newborn determines that there is reason to suspect the newborn has experienced neglect or abuse, other than the surrendering of the child pursuant to the Safe Delivery of Newborns Law, or comes to a reasonable belief that the child is not a newborn,* the physician must immediately make a report of suspected child abuse to the FIA as required by the Child Protection Law, MCL 722.623. MCL 712.5(2).

When the physician is not required to make a report to the FIA pursuant to MCL 712.5(2), the hospital must notify a child placing agency that the hospital has taken a newborn into temporary protective custody. MCL 712.5(3).

1. Mandatory Report of Child Abuse Not Required

MCL 722.623 mandates that if the following individuals have reasonable cause to suspect child abuse or neglect they must report the abuse or neglect to the FIA: a physician, dentist, physician’s assistant, registered dental

*A newborn is a child that a physician reasonably believes to be not more than 72 hours old. MCL 712.1(2)(j).

hygienist, medical examiner, nurse, person licensed to provide emergency medical care, audiologist, psychologist, marriage and family therapist, licensed professional counselor, certified social worker, social worker, social work technician, school administrator, school counselor or teacher, law enforcement officer, member of the clergy, or regulated child care provider.

MCL 712.2(2) provides that the reporting requirement of MCL 722.623 does not apply regarding a child surrendered to an emergency provider as prescribed in the Safe Delivery of Newborns Law, except as provided in MCL 712.5. MCL 712.5 provides that if the physician who examines the newborn determines that there is reason to suspect the newborn has experienced neglect or abuse, other than the surrendering of the child pursuant to the Safe Delivery of Newborns Law, or comes to a reasonable belief that the child is not a newborn, the physician must immediately make a report of suspected child abuse.

2. Immunity From Civil Damages

MCL 712.2(4) provides:

“A hospital and a child placing agency, and their agents and employees, are immune in a civil action for damages for an act or omission in accepting or transferring a newborn under this chapter, except for an act or omission constituting gross negligence or willful or wanton misconduct. To the extent not protected by the immunity conferred by 1964 PA 170, MCL 691.1401 to 691.1415, an employee or contractor of a fire department or police station has the same immunity that this subsection provides to a hospital’s or child placing agency’s agent or employee.”

MCL 712.1(2)(g) defines “gross negligence” as “conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.”

SJI2d 14.12 defines “willful misconduct” as “conduct or a failure to act that was intended to harm the plaintiff.” SJI2d 14.11 defines “wanton misconduct” as “conduct or a failure to act that shows such indifference to whether harm will result as to be equal to a willingness that harm will result.”

C. Duties of the Child Placing Agency

Pursuant to MCL 712.7, once a child placing agency receives notice from a hospital, as required by MCL 712.5, the child placing agency must do all of the following:

“(a) Immediately assume the care, control, and temporary protective custody of the newborn.

“(b) If a parent is known and willing, immediately meet with the parent.

“(c) Make a temporary placement of the newborn with a prospective adoptive parent who has an approved preplacement assessment* and resides within the state.

“(d) Immediately request assistance from law enforcement officials to investigate and determine, through the missing children information clearinghouse, the national center for missing and exploited children, and any other national and state resources, whether the newborn is a missing child.

“(e) Not later than 48 hours after a transfer of physical custody to a prospective adoptive parent, petition the court in the county in which the prospective adoptive parent resides to provide authority to place the newborn and provide care for the newborn. The petition shall include all of the following:

- (i) The date of the transfer of physical custody.
- (ii) The name and address of the emergency service provider to whom the newborn was surrendered.
- (iii) Any information, either written or verbal, that was provided by and to the parent who surrendered the newborn. The emergency service provider that originally accepted the newborn as required by [MCL 712.3] shall provide this information to the child placing agency.

“(f) Within 28 days, make reasonable efforts to identify and locate a parent who did not surrender the newborn. If the identity and address of that parent are unknown, the child placing agency shall provide notice by publication in a newspaper of general circulation in the county where the newborn was surrendered.”

See Appendix B for the SCAO forms “Petition for Placement Order of Surrendered Newborn Child” and “Order Placing Surrendered Newborn With Prospective Adoptive Parents.”

D. Jurisdiction and Authority

MCL 712.2 (1) provides, in part:

“The court has jurisdiction over a newborn who is surrendered to an emergency service provider as provided in [MCL 712.3]. . . .”

MCL 712.1(2)(b) defines “Court” as the Family Division of Circuit Court.

*MCL 712.1(2)(l) defines “Preplacement assessment” as “an assessment of a prospective adoptive parent as described in [MCL 710.23f].” See Section 5.2 for information on preplacement assessments.

*See Section 4.7 for information on the powers and duties of a lawyer-guardian ad litem.

The court may appoint a lawyer-guardian ad litem to represent a newborn in proceedings under this chapter. MCL 712.2(1).

MCL 712.1(2)(i) provides:

“‘Lawyer-guardian ad litem’ means an attorney appointed under [MCL 712.2]. A lawyer-guardian ad litem represents the newborn, and has the powers and duties, as set forth in [MCL 712A.17d*].”

Note: A detailed discussion of the responsibilities and duties of a lawyer-guardian ad litem is beyond the scope of this benchbook. See Miller, *Lawyer Guardian Ad Litem Protocol* (MJI, 2003).

E. Biological Parent Requests Custody

A biological parent of a newborn may request custody of the newborn after the newborn has been surrendered to an emergency service provider. MCL 712.10 requires a biological parent to file a petition for custody within 28 days after the newborn was surrendered. MCL 712.10(1)(a)–(c) provide that the biological parent may file the petition in one of the following counties:

“(a) If the parent has located the newborn, the county where the newborn is located.

“(b) If subdivision (a) does not apply and the parent knows the location of the emergency service provider to whom the newborn was surrendered, the county where the emergency service provider is located.

“(c) If neither subdivision (a) nor (b) apply, the county where the parent is located.”

See Appendix B for the SCAO form “Petition of Parent for Custody of Surrendered Newborn Child.”

Before the court holds a custody hearing on the petition of a parent for custody of a surrendered newborn, the court must determine whether the individual filing the custody action is the newborn’s biological parent. MCL 712.10(2).

Applicability of Other Law. MCL 712.2(3) provides:

“Unless [the Safe Delivery of Newborns Law] specifically provides otherwise, a provision in another chapter of [the Probate Code] does not apply to a proceeding under [the Safe Delivery of Newborns Law]. Unless [the Safe Delivery of Newborns Law] specifically provides otherwise, the child custody act of 1970, 1970 PA 91, MCL 722.21 to 722.30, does not apply to a proceeding under this chapter.”

Determination of Maternity and Paternity. MCL 712.11(1) requires the court, in a custody action filed under this chapter, to order that each party claiming paternity or maternity and the child submit to DNA testing or blood or tissue typing to determine whether each party is likely to be or is not the biological parent of the child. If the court orders DNA testing and a party refuses to submit to the testing, the court may do any of the following:

“(a) Dismiss the custody action in regard to the party who refuses.

“(b) If a hearing is held, allow the disclosure of the fact of the refusal unless good cause is shown for not disclosing the fact of refusal.” MCL 712.11(1)(a)–(b).

See Appendix B for the SCAO form “Order for Blood or Tissue Typing or DNA Profile (Safe Delivery of Newborn Act).”

The blood or tissue typing or DNA identification profiling must be conducted by a person accredited for paternity or maternity determinations by a nationally recognized scientific organization, including but not limited to the American Association of Blood Banks. MCL 712.11(2).

Costs of Blood or Tissue Typing or DNA Identification Profiling. MCL 712.11(3) provides:

“The court shall fix the compensation of an expert at a reasonable amount. Except for an individual who the court determines is indigent, the court shall direct each party claiming paternity or maternity to pay the compensation for his or her own testing plus a portion of the compensation for testing the child equal to the total amount divided by the number of parties claiming paternity and maternity. Before blood or tissue typing or DNA identification profiling is conducted, the court may order a part or all of the compensation paid in advance. Documentation of the genetic testing expenses is admissible as evidence of the amount, which evidence constitutes prima facie evidence of the amount of those expenses without third party foundation testimony.”

Results of Blood or Tissue Typing or DNA Identification Profiling. The results of blood or tissue typing or DNA identification profiling made pursuant to the Safe Delivery of Newborns Law must be served on the party tested. The results must also be filed with the court. MCL 712.12(1). If an objection is not filed, the court shall admit in proceedings under the Safe Delivery of Newborns Law the result of the blood or tissue typing or the DNA identification profile and the summary report without requiring foundation testimony or other proof of authenticity or accuracy. MCL 712.12(1).

Objections to the Results of Blood or Tissue Typing or DNA Identification Profiling. A written objection to the DNA identification profile or summary report must be filed within 14 days of service on the party

or the objection is waived. The objection must set forth the specific basis for the objection. MCL 712.12(1). The court must not schedule a hearing on the issue of paternity or maternity until after the expiration of the 14-day period.

MCL 712.12(1) also provides:

*A qualified person is a person accredited for paternity or maternity determinations by a nationally recognized scientific organization, including but not limited to the American Association of Blood Banks. MCL 712.11(2).

“ . . . If an objection is filed within the 14-day period and on the motion of a party, the court shall hold a hearing to determine the admissibility of the DNA identification profile or summary report. The objecting party has the burden of proving by clear and convincing evidence by a qualified person described in [MCL 712.11*] that foundation testimony or other proof of authenticity or accuracy is necessary for admission of the DNA identification profile or summary report.”

See Appendix B for the SCAO form “Motion Objecting to DNA Identification Profile or Blood/Tissue Typing Summary Report.”

Admissibility of the Results of Blood or Tissue Typing or DNA Identification Profiling. MCL 712.12(2) provides:

“If the probability of paternity or maternity determined by the qualified person described in [MCL 712.11] conducting the blood or tissue typing or DNA identification profiling is 99% or higher, and the DNA identification profile and summary report are admissible as provided in subsection (1), paternity or maternity is presumed. If the results of the analysis of genetic testing material from 2 or more persons indicate a probability of paternity or maternity greater than 99%, the contracting laboratory shall conduct additional genetic testing until all but 1 of the putative fathers or putative mothers is eliminated, unless the dispute involves 2 or more putative fathers or putative mothers who have identical DNA.”

Summary Disposition. Once a party establishes the presumption of maternity or paternity as provided in MCL 712.12(2), that party may move for summary disposition on the issue of paternity or maternity. MCL 712.12(3).

Disclosure of Information Obtained Through Genetic Testing. Information that is obtained through genetic testing pursuant to the Safe Delivery of Newborns Law must not be disclosed, except as authorized in the Safe Delivery of Newborns Law. MCL 712.13. The only authorization in the Safe Delivery of Newborns Law is contained in MCL 712.12(1), which provides that the parties tested must be served with a copy of the results and a copy must be filed with the court. A violation of MCL 712.13 is a misdemeanor punishable by a fine of not more than \$5,000.00 for the first offense. Second or subsequent offenses are punishable by imprisonment for not more than one year and/or a fine of not more than \$10,000.00. MCL 712.13(6).

F. Hearing to Determine Custody

In a custody action filed under the Safe Delivery of Newborns Law, the court must determine custody based upon the best interests of the newborn. MCL 712.14(1) requires the court to consider, evaluate, and make findings on each factor of the newborn's best interest with the goal of achieving permanence for the newborn at the earliest possible date.

MCL 712.14(2) provides:

“A newborn's best interest in a custody action under this chapter is all of the following factors regarding a parent claiming parenthood of the newborn:

“(a) The love, affection, and other emotional ties existing between the newborn and the parent.

“(b) The parent's capacity to give the newborn love, affection, and guidance.

“(c) The parent's capacity and disposition to provide the newborn with food, clothing, medical care, or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.

“(d) The permanence, as a family unit, of the existing or proposed custodial home.

“(e) The parent's moral fitness.

“(f) The parent's mental and physical health.

“(g) Whether the parent has a history of domestic violence.

“(h) If the parent is not the parent who surrendered the newborn, the opportunity the parent had to provide appropriate care and custody of the newborn before the newborn's birth or surrender.

“(i) Any other factor considered by the court to be relevant to the determination of the newborn's best interest.”

For the purposes of factor (g), whether the parent has a history of domestic violence, the Safe Delivery of Newborns Law refers to the definition of domestic violence provided in the Prevention and Treatment of Domestic Violence Act, MCL 400.1501 et seq. MCL 712.1(2)(d). The Prevention and Treatment of Domestic Violence Act provides:

“Domestic violence” means ‘the occurrence of any of the following acts by a person that is not an act of self-defense:

“(i) Causing or attempting to cause physical or mental harm to a family or household member.

“(ii) Placing a family or household member in fear of physical or mental harm.

“(iii) Causing or attempting to cause a family or household member to engage in involuntary sexual activity by force, threat of force, or duress.

“(iv) Engaging in activity toward a family or household member that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested.” MCL 400.1501(d).

Based upon the court’s findings of the newborn’s best interests, the court may issue an order that does one of the following:

“(a) Grants legal or physical custody, or both, of the newborn to the parent, and either retains or relinquishes jurisdiction.

“(b) Terminates the parent’s parental rights and gives a child placing agency custody and care of the newborn.” MCL 712.15.

See Appendix B for the SCAO form “Order Determining Custody of Surrendered Newborn Child.”

G. No Parental Request for Custody

*See Section 2.1 for information on release of parental rights.

A parent who surrenders a newborn and does not file a petition for custody under MCL 712.10 is presumed to have knowingly released his or her parental rights to the newborn.* MCL 712.17(1).

*See Section 2.14 for information on termination pursuant to MCL 712A.19b.

If a petition for custody is not filed under MCL 712.10, then the child placing agency shall petition the court for termination of parental rights under MCL 712A.19b.* If the agency has complied with MCL 712.7(f), then the notice under that section is the notice to the newborn’s parents required by MCL 712A.19b. MCL 712.7(f) requires the agency to make reasonable efforts to identify and locate a parent who did not surrender the newborn, and if the identity or address of the parent is unknown, the agency must publish notice in a newspaper in the county where the newborn was surrendered.

H. Safe Delivery of Newborns Program

MCL 712.20(1) provides that the Department of Community Health and the FIA must establish a safe delivery program.

Note: MCL 712.20 is only applicable until January 1, 2004.
MCL 712.20(2) repeals MCL 712.20 three years after its effective date, which was January 1, 2001.

The program must include, but is not limited to, the following:

“(a) A toll-free, 24-hour telephone line. The information provided with this telephone line shall include, but is not limited to, all of the following:

- (i) Information on prenatal care and the delivery of a newborn.
- (ii) Names of health agencies that can assist in obtaining services and supports that provide for the pregnancy-related health of the mother and the health of the baby.
- (iii) Information on adoption options and the name and telephone number of a child placing agency that can assist a parent or expecting parent in obtaining adoption services.
- (iv) Information that, in order to safely provide for the health of the mother and her newborn, the best place for the delivery of a child is in a hospital, hospital-based birthing center, or birthing center that is accredited by the commission for the accreditation of birth centers.
- (v) An explanation that, to the extent of the law, prenatal care and delivery services are routinely confidential within the health care system, if requested by the mother.
- (vi) Information that a hospital will take into protective custody a newborn that is surrendered as provided for in this chapter and, if needed, provide emergency medical assistance to the mother, the newborn, or both.
- (vii) Information regarding legal and procedural requirements related to the voluntary surrender of a child as provided for in this chapter.

(viii) Information regarding the legal consequences for endangering a child, including child protective service investigations and potential criminal penalties.

(ix) Information that surrendering a newborn for adoption as provided in this chapter is an affirmative defense to charges of abandonment as provided in section 135 of the Michigan penal code, 1931 PA 328, MCL 750.135.

(x) Information about resources for counseling and assistance with crisis management.

“(b) A pamphlet that provides information to the public concerning the safe delivery program. The department of community health and the [FIA] shall jointly publish and distribute the pamphlet. The pamphlet shall prominently display the toll-free telephone number prescribed by subdivision (a).”
MCL 712.20(1).

See Appendix H for the pamphlets prepared by the FIA regarding the safe delivery program. Also included in Appendix H is the “Safe Delivery Program Factsheet” prepared by the FIA. All of the pamphlets are also available on the FIA’s website at www.michigan.gov/fia. (Last visited on June 23, 2003.)